

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

CHRISTIAN HERNANDEZ,

Defendant.

Case No. [20-cr-00049-LHK-1](#) (SVK)

DETENTION ORDER

This matter came on for a public telephonic detention hearing on May 21, 2020. Defendant consented to appear telephonically, in light of the current public health restrictions. AFD Severa Keith, AUSA Jimmy Doan and Pretrial Services Officer Ana Mendoza also appeared telephonically. Both parties were allowed an opportunity to call witnesses and to present evidence. Both parties presented their arguments by way of proffer through counsel. Either party may appeal this detention order to the assigned trial judge, U.S. District Judge Lucy Koh.

Defendant is charged with violations of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii) and 18 U.S.C. § 922(g)(1), which creates a rebuttable presumption of detention pursuant to 18 U.S.C. § 3142(e)(3)(A). A pre-bail report prepared by Pretrial Services on May 20, 2020, recommends that defendant be detained as a risk of flight and as a danger to the community. As reasoned below the Court finds that Defendant has failed to satisfy his burden of production to rebut the presumption of detention.

The Court adopts the facts set forth in the Pretrial Services report, supplemented by information presented at the hearing. The Court finds that the Government has established by more than a preponderance of the evidence that the Defendant poses a risk of nonappearance that cannot be reasonably mitigated by any combination of conditions. The reasons for detention

1 include the following: lack of verifiable current address; lack of a viable surety; absence of
2 verifiable employment; a history of probation violations (2013, 2015); use of at least seven aliases;
3 and family ties to a foreign country. As a mitigating factor, the defense argued that Defendant has
4 no record of failure to appear for court. The Court finds that this factor is not enough to overcome
5 the presumption of risk of nonappearance in light of factors cited above.

6 The Court further finds that the Government has established by clear and convincing
7 evidence that the Defendant poses a danger to the community that cannot be reasonably mitigated
8 by any combination of conditions. The reasons for detention include the following: the nature of
9 instant offense, which includes a weapons charge as Defendant was in possession of a loaded
10 firearm at the time of arrest; a history of weapons charges (2017, 2019); the fact that Defendant
11 was engaged in criminal activity while under supervision; Defendant's arrest and conviction
12 history.

13 The Court notes that counsel for the Defendant also argued that Defendant should be
14 released in light of the current COVID-19 pandemic and the fact that Defendant had tested
15 positive for tuberculosis in 2019. The Pretrial Services report noted the test and that Defendant,
16 39 years old, had recently completed a medication regimen for the positive test result. The Court
17 appreciates the significant concerns that COVID-19 presents, particularly in an environment, such
18 as a jail, where social distancing may not be possible. However, the Court did not find the proffer
19 persuasive in light of the factors in favor of detention set forth above.

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23 The Defendant is committed to the custody of the Attorney General or his designated
24 representative for confinement in a corrections facility separate, to the extent practicable, from
25 persons awaiting or serving sentences or being held in custody pending appeal. The Defendant
26 must be afforded a reasonable opportunity for private consultation with defense counsel. On order
27 of a court of the United States or on the request of an attorney for the Government, the person in
28 charge of the corrections facility must deliver the Defendant to a United States Marshal for the

purpose of an appearance in connection with a court proceeding.

IT IS SO ORDERED.

Dated: May 21, 2020



SUSAN VAN KEULEN
United States Magistrate Judge